Testimony of Rep. Xavier Becerra (D-CA)
before the
Subcommittee on the Western Hemisphere,
House International Relations Committee

"US Trade Agreements in Latin America"
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Chairman Burton, Ranking Member Menendez, and Members of the subcommittee, thank you for inviting me to testify this afternoon regarding US Trade Agreements in Latin America. Trade in this hemisphere is robust, and its importance is growing by the day. U.S. exports to Central America in 2000 exceeded $8.8 billion. That is more than U.S. exports to Russia, Indonesia, and India combined. Since 1990, trade between Central America and the United States has nearly tripled. Looking to our neighbors farther south, U.S. exports to the Andean region in 2003 were reported at more than $5 billion, which is more than double US exports to Russia ($2.4 billion) during the same time period.

These statistics stand in sharp contrast to the burgeoning U.S. trade deficit with China. In 2004, the deficit was over $160 billion, which is an increase of more than 30% over the previous record set in 2003. Only one out of every six ships laden with goods from China returns with U.S. exports. And five out of the 10 fastest growing US exports to China from 2001-2003 were waste products like recyclable plastic, metals, aluminum, fiber, and paper.

In the heated competition for new markets and expanded economic opportunity, America loses if trade becomes a race to the bottom. The U.S. average wage per hour is $21.45 with benefits, and $14.67 an hour without benefits. The U.S. Bureau of Labor Statistics reports that the average hourly wage in China is 64 cents an hour, with that number being lower in rural areas. In the ten years since NAFTA's implementation, the Mexican minimum wage, which approximately 25% of the country's 40 million workers earn, has declined 20% and hovers at $4 a day. The reported job loss in the U.S. as a result of NAFTA is close to 900,000 jobs and job opportunities.

I submit that the biggest loser in a race to the bottom would be American companies. Many are already established in Latin America as responsible corporate citizens with standards that in some cases exceed the laws on the books in their host countries. In a race to the bottom, these companies would have to choose between competing as part of the vanguard in their treatment of workers and stewardship of the environment or competing the way others do at the margins.

Unfortunately, the current U.S. – Dominican Republic – Central America Free Trade Agreement (DR-CAFTA) misses an opportunity to meaningfully elevate the quality of life as well as the economies of our Central American - DR neighbors. Instead, it sets us on a course towards the lowest common denominator and competition at the margins.

It's not that we couldn't have done better. Our trade negotiators are some of the toughest in the world. They can come out "guns blazing" when they are serious about defending

American interests such as the protection of the intellectual property rights of US companies. Yet the same tenacity is not applied to protect human beings or the environment.

To be clear, I am pleased with many of the state-of-the-art intellectual property rights protections in the DR-CAFTA. Intellectual property rights are important to the entertainment industry and the economy of my city of Los Angeles, and indeed to the rest of the country. Motion picture and television production adds $50 billion a year to our economy and means jobs for more than 630,000 Americans. And our recording industry sells upwards of $14 billion a year in the U.S. alone.

In sections 15.5:7(a) and 8(a) of the DR-CAFTA the parties agreed to language that mandates that each party have or enact domestic laws that "provide for criminal procedures and penalties" when there is a willful infringement of copyright and related rights. These provisions could be described as one side of the "double-barreled shotgun" the U.S. holds over its trading partners under the DR-CAFTA. The other barrel comes in the form of the full range of economic trade sanctions which can be imposed for violation of the agreement.

In contrast, the only provision in the chapters on labor and environment that is enforceable through a dispute settlement process is a requirement that each country "shall not fail" to effectively enforce its own laws. The DR-CAFTA countries must merely enforce their existing laws, substandard or otherwise, with no worry that they must improve deficient laws to reflect even the most basic of international norms of decency and fairness for working people. In fact, the DR-CAFTA countries could weaken their labor laws at any time and face no firm consequences.

Moreover, unlike the intellectual property and other commercial provisions in other chapters of the DR-CAFTA, the primary mode of enforcing the labor and environmental provisions is not through trade sanctions. Instead, in section 20.17 of the current DR-CAFTA, there is a separate and far weaker dispute resolution mechanism for labor and environmental violations.

Thus, if a panel finds that a country has failed to enforce its own labor or environmental laws, the country may be directed to pay a monetary fine up to $15 million. The violating country effectively pays the fine to itself, as monies are to be spent on appropriate labor or environmental initiatives in the territory of the country complained against. The fine is to be paid into a fund and expended at the direction of a Commission comprised of cabinet-level representatives of the United States and DR-CAFTA countries. If the country fails to pay the fine, the country that brought the complaint may take "other appropriate steps" to secure compliance, including seeking the right to impose trade sanctions.

Some would argue that the identical recourse of trade sanctions exists for labor and environment violations as for any other commercial aspect of the agreement. However, the way these dispute settlement provisions are written, it is unlikely that trade sanctions would ever be imposed by countries for labor or environmental violations. With the only penalty being a fine capped at $15 million per year, a trading partner could decide that paying the fine is just the cost

of doing business. Compared to the double-barreled shotgun employed for intellectual property, this fine could be called the equivalent of a peashooter.

I make note of my next example with all due respect for the representatives from our friend and neighbor Guatemala. I have visited their country and am aware of and applaud their efforts to strengthen their nascent democracy. I outline the following facts to illustrate the stark contrast between U.S. demands on Guatemala's labor standards versus their intellectual property standards.

In 2000, the U.S. reviewed Guatemala's eligibility for trade preferences under the Generalized System of Preferences program and the Caribbean Basin Initiative, and expressed concern regarding labor violations. In April 2001, Guatemala enacted major labor reforms. However, aspects of the 2001 reforms were challenged by employers in court. Twelve articles of the labor code were deemed to be partially or wholly unconstitutional by the Constitutional Court of Guatemala in August 2004. Of specific concern, the ruling overturned the power of the General Inspector of Labor to impose administrative fines for labor-rights violators. To date, some five years after the U.S. conveyed its concerns, there is still no enforceability of the labor standards that passed constitutional muster, and no legislation has been introduced to resolve this current vacuum of enforcement in a constitutional manner.

In notable contrast, in December of 2004, the Guatemalan Congress approved a law that would give generic drug companies access to clinical trial data used by patented drugs to secure marketing approval. Our Administration argued that this law was contrary to the negotiated DR-CAFTA, which requires five years' worth of protection for clinical trial information. It was reported that the Administration said it would not present DR-CAFTA to Congress until Guatemala repealed that legislation. By the end of January 2005, in little more than one month, the Guatemalan government had introduced legislation to re-instate the 5-year protection for patented pharmaceuticals. And last month—only three months after hearing U.S. concerns—the bill became law. In this instance, the Administration did not use a double-barreled shotgun, it threatened to use the "nuclear option" and blow up the whole agreement. I do not blame our friends in Guatemala for making these changes. I only wish we had the same enthusiasm for protecting human beings and the environment.

There are some very basic, minimum, internationally-recognized standards on labor that we all can support for workers. They are prohibitions on the worst forms of child labor, discrimination, and forced labor, and the rights of association and collective bargaining.

In December 2003, I joined with my colleagues Congressmen Rangel and Levin in sending a letter to then-USTR Ambassador Robert Zoellick identifying 26 separate areas in which CAFTA countries' laws were deficient in relation to basic international labor standards. The letter was based on published reports by the U.S. Department of State, the International Labour Organization (ILO), and other creditable sources. We never received an answer from the USTR to the listing of legal shortcomings. Nine days ago, on April 4, 2005, joined by Congressman Cardin, we sent a follow-up letter to the Administration, identifying the 20 areas in which the CAFTA countries are still out of compliance with basic ILO standards.

On April 5, 2005, Ministers responsible for Trade and Labor from the DR-CAFTA countries released a "White Paper" that outlines the Ministers' views of labor conditions in their countries and a work plan to improve enforcement of labor laws. The report asserts that the countries' laws "generally provide high levels of protection for the core labor standards," although the report also notes several areas where the ILO has found deficiencies. It also provides a series of recommendations about where resources from regional and international donors could be used to improve the capacity of the countries to implement and enforce labor standards. Finally it asks the Inter-American Development Bank to convene a meeting of the relevant donors and technical assistance agencies to discuss the recommendations in the report.

Most of the DR-CAFTA countries are trying to move in the right direction toward basic standards on both labor and the environment. On February 18, 2005, the DR-CAFTA countries signed two side agreements designed to complement and facilitate the implementation of environmental provisions in the DR-CAFTA. But, frankly, if the countries are genuinely willing to make lasting progress in the areas of labor and the environment and be held accountable, the terms for this should be included within the four corners of the trade agreement. Anything else, whether side agreements or "white papers," comes up short. We need only examine the fruits of the NAFTA side agreements on labor and the environment for dispositive proof of this.

President Ronald Reagan is famous for having said, "Trust, but verify." We should trust our DR-CAFTA neighbors to raise their labor and environmental standards, but we should also have the means to verify.

The truth is, if we were to tell the American public that we were opening up our markets to further international competition based on an expressed promise or the good intentions of our competitors, the American people would run us out of Washington. Just as no consumer today would buy or sell a house on a handshake, neither should we open our markets with one.

Along with accountability, I agree wholeheartedly with the DR-CAFTA Ministers' assertion that investment in the region is key. The integration of the European Union (EU) provides a good example. Last May, 10 new members acceded to the EU which is the largest trade area in the world. The EU demonstrated a commitment not only to market liberalization, but also to reducing inequality. From its inception in 1957 to 2001, the EU has funneled approximately $353 billion in development grants to member states. This is roughly 10 times the total US economic assistance grants to all of Latin America in the same time period. When approaching trade from a holistic view, the goal should not be limited simply to access to new markets, but also to lifting up our trading partners so that we can trade as equals.

Likewise, as we talk about capacity building, we have to "put our money where our mouth is." We cannot encourage our trading partners to enforce their labor and environmental laws, but starve the very programs that would build capacity for countries to enforce the laws on their books. For example, the Department of Labor's International Labor Affairs Bureau, (ILAB) operates programs to promote core labor standards internationally and support efforts to combat child labor. Yet the Administration's budget request for fiscal year 2006 for this important bureau is only $12 million. This represents a precipitous drop from past years and,

unfortunately, a disturbing pattern from this Administration. Congress appropriated $94 million in fiscal year 2005, $110 million for fiscal year 2004, and $147 million in fiscal year 2003.

In conclusion, I would state that nobody wins in a race to the bottom. The vast majority of people in the DR-CAFTA countries – the workers, the farmers, the small merchants—would not win, and U.S. businesses certainly would not win in the long run. It is better to lift all boats so we can trade as equals. I recognize the importance of trade in this hemisphere, and the importance of a DR-CAFTA. I have supported implementing legislation for every Free Trade Agreement that has come before me in my 12 years in Congress. Regrettably, the current DR-CAFTA is not a trade agreement that I can support.